

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of California Water Service Company (U 60 W), a Corporation, for authorization to increase rates charged for water service in the SOUTH SAN FRANCISCO district by \$1,084,700 or 10.83%, in 2004, by \$386,100 or 3.5% in 2005, by \$193,500 or 1.7% in 2006, and \$200,300 or 1.7% in 2007. (N03-10-011).

Application 03-10-017  
(Filed October 1, 2003)

And Related Matters.

Application 03-10-018  
Application 03-10-019  
Application 03-10-020  
Application 03-10-021  
Application 03-10-031

**RESPONSE OF THE OFFICE OF RATEPAYER ADVOCATES TO  
MOTION FOR RELIEF CONCERNING TCPA LEVELS IN  
BAKERSFIELD AND SOUTH SAN FRANCISCO DISTRICTS**

**I. INTRODUCTION**

Pursuant to the December 5, 2003 Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge (Scoping Memo), the Office of Ratepayer Advocates (ORA) responds to the Motion of California Water Service Company (U 60 W) For Relief Concerning TCPA Levels in Bakersfield and South San Francisco Districts filed on January 2, 2004 (CWS' TCPA Motion).

In its motion, the California Water Service Company (CWS) seeks a “[Commission] order for finding that it is reasonable to operate wells in the Bakersfield and South San Francisco districts above the action level for the contaminant 1,2,3 Trichloropropane (TCPA) but below its removal of source level, as recommended by the Department of Health Services (DHS).”<sup>1</sup> For the reasons discussed herein, ORA supports this motion.

## **II. BACKGROUND**

This proceeding is a general rate case (GRC) for five CWS districts: South San Francisco, Stockton, Mid-Peninsula, Salinas, and Bakersfield. In its application for all of these districts except for the Mid-Peninsula district, CWS “requests that the Commission make a finding that service exceeding the Action Level as defined by the California Department of Health Services for 1,2,3 Trichloropropane (TCPA) does not constitute a threat to public health.”<sup>2</sup> CWS also states that “determination of health risk from TCPA is critical to the operation of many Cal Water districts,” and thus asks the Commission to address this issue “as soon as possible.”<sup>3</sup> In the alternative, CWS seeks authority to file “an offset application for rate relief associated with TCPA” and to “track costs associated with treating TCPA in a memorandum account until the offset is approved.”<sup>4</sup>

At the request of Commission staff, CWS agreed to withdraw its applications for three of

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<sup>1</sup> CWS TCPA Motion at 2 (footnote omitted). As a point of clarification, it is ORA’s understanding that CWS’s reference to the “recommendation” of DHS in this statement pertains to the action level and the removal of source level that are appropriate for TCPA, and that DHS has not made a recommendation about whether the Commission should adopt the finding requested by CWS.

<sup>2</sup> South San Francisco (SSF) Application at 5-6; Stockton Application at 6; Salinas Application at 6; Salinas Application (excluding two service areas) at 6; and Bakersfield Application at 6.

<sup>3</sup> See, e.g., SSF Application at 6.

<sup>4</sup> *Id.*

these districts – Stockton, Mid-Peninsula, and Salinas.<sup>5</sup> CWS’s motion to withdraw these applications, and concurrently establish water quality memorandum accounts for the Salinas and Stockton districts, is pending before this Commission.<sup>6</sup>

At the December 3, 2003 Pre-Hearing Conference, CWS indicated that it has closed down, on an interim basis, some of the wells for which the Action Level for TCPA has been exceeded, and expressed interest in obtaining “an early ruling” on whether the wells above the TCPA Action Level could be put back into use, or had to be treated.<sup>7</sup> ORA agreed to expedited treatment of this issue.<sup>8</sup>

In the December 5, 2003 Scoping Memo, the Commission provided the following guidance: “an expedited hearing should be held to provide the Commission with additional water quality information for the South San Francisco, Stockton, Salinas, and Bakersfield districts; to determine what measures the Commission should undertake; and, if the Stockton and Salinas applications are to be dismissed, to decide under what terms and conditions the dismissals will be allowed.”<sup>9</sup>

Pursuant to the Scoping Memo, CWS filed the motion at issue on January 2, 2004.<sup>10</sup> CWS indicates that the motion only addresses wells in the SSF and Bakersfield districts because “[f]urther testing has confirmed non-detectable levels of TCPA in wells” in the Stockton and Salinas districts.<sup>11</sup> In support of its request, CWS submits the

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<sup>5</sup> See *Motion of California Water Service Company (U 60 W) to Establish Memorandum Accounts Upon Withdrawal of Applications 03-10-018, 03-10-019, 03-10-020, & 03-10-031* (December 2, 2003) (CWS Motion to Withdraw) at 2-3. In a pending proceeding, the Commission is investigating the regulatory status of two service areas – the County Meadows Mutual Water System and the Indian Springs Mutual Water System. See D.03-09-021, *mimeo*, at 10 (September 4, 2003). Because of the ambiguous status of these service areas, CWS filed two applications for its Salinas District: one that includes the service areas in question (A.03-10-020), and one that excludes them (A.03-10-031).

<sup>6</sup> CWS Motion to Withdraw, *infra*.

<sup>7</sup> CWS/Smegal, RT 11:5-8, RT 12:2-4; see CWS/Smegal, RT 9:3-15.

<sup>8</sup> ORA/Wales, RT 17:28 and 18:1-5.

<sup>9</sup> Scoping Memo at 5.

<sup>10</sup> CWS TCPA Motion.

<sup>11</sup> *Id.* at note 1.

“Prepared Testimony of Chet W. Auckly in Support of Finding on 1,2,3-Trichloropropane” (Auckly Testimony).

### **III. DISCUSSION**

As discussed below, the Commission has jurisdiction to adopt the relief requested by CWS, and granting CWS’ motion would be consistent with Commission’s practices and policies regarding water quality.

#### **A. CWS’ Water Quality Meets DHS’ Standards For TCPA**

As indicated in Exhibit 1 of the Auckly Testimony, DHS describes the health concerns relating to TCPA as follows:

1,2,3-TCP causes cancer in laboratory animals (US EPA, 1997), which is the basis for the action level. It is reasonably anticipated to be a human carcinogen (NTP, 2002). In 1999, 1,2,3-TCP was added to the list of chemicals known to the state to cause cancer [Title 22, California Code of Regulations, Section 12000], pursuant to California's Safe Drinking Water and Toxic Enforcement Act of 1986.<sup>12</sup>

DHS has determined that the Action Level – the level of contamination that requires a utility to provide certain notifications – for TCPA is 0.005 micrograms per liter (µg/L).<sup>13</sup> DHS requires that a water source be removed from use if this Action Level is exceeded by 100 times, or in this case, 0.5 µg/L.<sup>14</sup> Thus, for well water in which TCPA has been detected at levels between 0.005 and 0.5 µg/L, DHS requires notification regarding presence of the contaminant, but not “removal from use.”

CWS specifies that 3 wells in its SSF district and 23 wells in its Bakersfield district contain TCPA above DHS’s Action Level, but below the “removal-from-source” level.<sup>15</sup> Of these, the range of testing results for 8 wells contain TCPA at 10 times the

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<sup>12</sup> Auckly Testimony at Exhibit 1, “Drinking Water Action Level for 1,2,3-Trichloropropane” (last updated December 2, 2003) from <http://www.dhs.ca.gov/ps/ddwem/chemicals/123tcp/actionlevel.htm>, at 1.

<sup>13</sup> *Id.*

<sup>14</sup> Auckly Testimony, Exhibit 1 at 2.

<sup>15</sup> Auckly Testimony at 4; *see also* Auckly Testimony at Exhibit 3.

Action Level, with the highest in Bakersfield at a range of 0.210 to 0.280 µg/L.<sup>16</sup> TCPA is therefore present in CWS' wells at amounts well within DHS' TCPA standards for drinking water.

**B. The Commission Can And Should Rely On DHS Standards For Water Quality**

It is undisputed that the Commission has long held concurrent jurisdiction over water quality with California's Department of Health Services (DHS).<sup>17</sup> In *Hartwell vs. Superior Court*, the California Supreme Court clarified the relationship between the water quality standards established by DHS – in this case the Action Level for TCPA – and the work of the Commission:

While the water quality standards may be the product of DHS study and expertise, they are the PUC standards as well. The Legislature, by mandating that the PUC standards cannot be "inconsistent" with DHS water quality standards, has established that the DHS safety standards are the minimum standards for the PUC to use in performing its regulatory function of ensuring compliance with safety standards.<sup>18</sup>

As suggested by the CA Supreme Court in *Hartwell*, it is not inappropriate for the Commission to rely on DHS standards such as these for TCPA. This kind of coordination between the agencies is consistent with the law and past Commission practice, as well as being an efficient use of resources.

There is no indication in this case that the TCPA Action Level established by DHS is flawed or otherwise inconsistent with the Commission's responsibility for ensuring the

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<sup>16</sup> Auckly Testimony at Exhibit 3.

<sup>17</sup> See D.00-11-014, *mimeo*, at 12-13 (November 2, 2000); *see also Hartwell Corp. v. Superior Court*, 115 Cal.Rptr.2d 874, 886-889 (2002) (*Hartwell*).

<sup>18</sup> *Hartwell*, 115 Cal.Rptr.2d at 887.

safety of water quality in CWS' SSF and Bakersfield districts.<sup>19</sup> As discussed above, CWS Witness Auckly testifies that the wells with detectable TCPA in these districts still meet DHS' standards for safe drinking water. The Commission therefore has a sound basis to find that continued use of these wells does not pose a threat to public health.

Furthermore, CWS estimates that treating these wells could result in capital costs between \$8M to \$13M, plus operating and maintenance costs, none of which are included in the rate case applications at issue in this proceeding.<sup>20</sup> If CWS *had* proposed treatment of these wells in its rate cases with these estimates, even if they are rough estimates, it is unlikely that the Commission would have found, for ratemaking purposes, that such costs were reasonable in light of the low levels of contamination. The CA Supreme Court in *Hartwell* describes just such this analysis that the Commission would engage in:

Whether a treatment facility is needed, and, if so, the expense thereof, cannot be determined except with reference to an applicable water quality standard. General order No. 103, promulgated by the PUC in 1956, formally adopted the DHS water quality standards as its own. Thus, the DHS standards serve as those benchmarks.<sup>21</sup>

The court went on to conclude that compliance with DHS' standards, and the Commission's reliance on those standards, effectively provide utilities with a "safe harbor" from certain civil litigation.<sup>22</sup> Under the court's interpretation, it is therefore reasonable for the Commission to apply this "safe harbor" to CWS based on the facts of this case, and thus to conclude that continued use of the wells at issue does not constitute a threat to public health.

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<sup>19</sup> See e.g., *Apple Valley Ranchos Water Company*, D.03-08-069, *mimeo*, at 23-24 (August 21, 2003), 2002 Cal.PUC LEXIS 1003 at \*32 (2003) (relying on DHS' findings to determine need for new well, the Commission concluded as follows: "DHS, our sister agency and the state agency best equipped to assess water supply requirements, has found that AVR is not able to meet its maximum day demand water supply requirement. Absent evidence that the assessment of DHS is incorrect, we rely on the expertise of DHS and concur with DHS that a new well is necessary.").

<sup>20</sup> TCPA Motion at 8; *see also* Auckly Testimony at 5.

<sup>21</sup> *Hartwell*, 115 Cal.Rptr.2d at 891.

<sup>22</sup> *Id.*

#### **IV. The Stockton, Mid-Peninsula, and Salinas Applications Should Be Dismissed Immediately.**

As discussed above, CWS seeks authority to withdraw the Stockton, Mid-Peninsula, and Salinas applications, as requested by Commission staff and supported by ORA.<sup>23</sup> CWS also seeks to establish water quality memorandum accounts for water quality improvements associated with contaminants other than TCPA, a request that ORA does not oppose.<sup>24</sup> No concerns have been raised about dismissal of the Mid-Peninsula district.<sup>25</sup> The only outstanding issue for the Stockton and Salinas districts has been the detection of TCPA,<sup>26</sup> however CWS now states that TCPA can no longer be detected in any of the wells in Stockton and Salinas.<sup>27</sup> Therefore, ORA urges the Commission to dismiss these applications and authorize establishment of the requested water quality memorandum accounts, relating to contaminants other than TCPA, for the Stockton and Salinas districts.

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<sup>23</sup> CWS Motion to Withdraw.

<sup>24</sup> *Id.*

<sup>25</sup> At the December 2, 2003 Prehearing Conference, the ALJ stated as follows: “There is no ratemaking issue at this moment, or water quality issue for Mid-Peninsula, so it is likely that that will be dismissed once the motion to dismiss is filed.” ALJ RT 19-20.

<sup>26</sup> *See, e.g.*, Scoping Memo at 5 (“The Commission cannot consider the dismissal of the Stockton and Salinas applications until more is known about the water quality issue.”); *see also* ALJ, RT 19:21-26.

<sup>27</sup> CWS TCPA Motion at note 1.

Respectfully submitted,

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February 2, 2004



**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the foregoing document  
**“RESPONSE OF THE OFFICE OF RATEPAYER ADVOCATES TO MOTION  
FOR RELIEF CONCERNING TCPA LEVELS IN BAKERSFIELD AND SOUTH  
SAN FRANCISCO DISTRICTS”** in **A.03-10-017, et al.**

A copy has been e-mailed on all known parties of record who have provided e-mail addresses. In addition, all parties have been served by first-class mail.

Executed in San Francisco, California, on the **2nd** day of **February, 2004.**

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Sue Ann Muniz